

JOINT APPLICATION AND NOTIFICATION

RECEIVED

U.S. ARMY CORPS OF ENGINEERS
MISSISSIPPI DEPARTMENT OF MARINE RESOURCES
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY/OFFICE OF POLLUTION CONTROL **DEC 12 2024**

Mississippi Dept of Marine Resources
12 02 2024
WETLANDS PERMITTING

This form is to be used for proposed activities in waters of the United States in Mississippi and for the erection of structures on suitable sites for water dependent industry. Note that some items, as indicated, apply only to projects located in the coastal area of Hancock, Harrison and Jackson Counties.

2. Applicant name, mailing address, phone number and email address:

Kelspin Holdings II, LLC
440 Green Teal Ct
Biloxi, MS 39531

Agent name, mailing address, phone number and email address:

Schwartz, Orgler, Jordan & Williams, PLLC
2137 E. Pass Road, Ste B
Gulfport, MS 39507

3. Official use only

COE _____
DMR _____
DEQ _____
A95 _____
DATE RECEIVED _____

4. Project location

Street Address 705/701 Bienville Blvd City/Community Ocean Springs
Name of Waterway Fort Bayou Latitude 30.41707 N Longitude (if known) 88.83350 W
Geographic location: Section 24 Township 7 Range 9 County Jackson

5. Project description

New work Maintenance work

Dredging

<input type="checkbox"/> Channel	length _____	width _____	existing depth _____	proposed depth _____
<input type="checkbox"/> Canal	length _____	width _____	existing depth _____	proposed depth _____
<input type="checkbox"/> Boat Slip	length _____	width _____	existing depth _____	proposed depth _____
<input type="checkbox"/> Marina	length _____	width _____	existing depth _____	proposed depth _____
<input type="checkbox"/> Other-Mooring Basin	length _____	width _____	existing depth _____	proposed depth _____

Cubic yards of material to be removed _____ Type of material _____
Location of spoil disposal area _____
Dimensions of spoil area _____ Method of excavation _____
How will excavated material be contained? _____

Construction of structures

<input type="checkbox"/> Bulkhead	Total length _____	Height above water _____
<input checked="" type="checkbox"/> Pier	length <u>see attached exhibit</u>	width <u>see attached exhibit</u> height <u>see attached exhibit</u>
<input type="checkbox"/> Boat Ramp	length _____	width _____ slope _____
<input type="checkbox"/> Boat House	length _____	width _____ height _____

Structures on designed sites for water dependent industry (Coastal area only). Explain in item 11 or include as attachment.

Other (explain) The pier structures collectively serve as parking for three restaurant/bars.

Filling

Dimensions of fill area _____
Cubic yards of fill _____ Type of fill _____

Other regulated activities (i.e. Seismic exploration, burning or clearing of marsh) Explain.

6. Additional information relating to the proposed activity

Does project area contain any marsh vegetation? Yes No

(If yes, explain) a portion of the piers which go north and south are over a portion of marsh area. the floating portions that go east and west do not impact marsh.

Is any portion of the activity for which authorization is sought now complete? Yes No

(If yes, explain) All structures as reflected on the attached Exhibit are fully completed. The exhibit reflects the existing structures. No additional structure are proposed.

Month and year activity took place certain wood portions of the structures at 705 Bienville have existed since January 2004. The remaining portions were added between Jan2022-Feb 23

If project is for maintenance work on existing structures or existing channels, describe legal authorization for the existing work. Provide permit number, dates or other form(s) of authorization. DMR 22-000149

Has any agency denied approval for the activity described herein or for any activity that is directly related to the activity described herein?

Yes No (If yes, explain)

7. Project schedule

Proposed start date Proposed completion date

Expected completion date (or development timetable) for any projects dependent on the activity described herein.

The application is seeking letter of permission for after the fact approval of existing structures, which exceed the approval granted by prior permit. This application is not requested any additional structures. The scope of the application is limited to the existing improvements.

8. Estimated cost of the project no additional funds will be spent, as all structures reflected on the attached exhibit are existing.

9. Describe the purpose of this project. Describe the relationship between this project and any secondary or future development the project is designed to support. The piers serve as parking and access for Bacchus on the Bayou, Eat Drink Love, and 701 Craft.

All three of these businesses depend on water access, and Eat Drink Love and 701 Craft have very limited vehicle parking on land. Without the requested improvements, Eat Drink Love and 701 Craft would have zero water access

Intended use: Private Commercial Public Other (Explain) The piers are on private property, but serve a public purpose.

10. Describe the public benefits of the proposed activity and of the projects dependent on the proposed activity.

Also describe the extent of public use of the proposed project.

The public benefits from having additional restaurants which are accessible by water.

11. Narrative Project Description:

Bacchus on the Bayou, Eat Drink Love, and 701 Craft are located at 705/701 Bienville Blvd, Ocean Springs, MS 39564. The properties were acquired and developed by the current owner from May 2021-23. The property owner, Kelspin Holdings II, LLC hired a contractor to handle the development. The contractor handled permitting and installation of the docks and floating piers. It has been brought to the owner's attention that the scope of the piers which were installed by the contractor exceeds what was approved by DMR/Corp of Engineers, so the owner is filing the instant application to remedy any issues. The Contractor erred in submitted the prior application(s). The prior application(s) did not include the 137' of floating docks on the west side of the development, which serves Bacchus on the Bayou. This 137' of additional mooring space was necessary, as on the busy weekends, there was not enough space to tie up boats which desired to visit the restaurant, which resulted in unnecessary traffic in the surrounding bayous. The prior application also did not include any of the improvements on the East side of the original preexisting wood Mcelroy's pier which serve Eat Drink Love and 701 Craft. If the letter of permission is not granted related to the east side improvements, Eat Drink Love and 701 craft will have zero water access or parking.

12. Provide the names and addresses of the adjacent property owners. Also identify the property owners on the plan view of the drawing described in Attachment "A". (Attach additional sheets if necessary.)

1. See exhibit "B"

2.

13. List all approvals or certifications received or applied for from Federal, State and Local agencies for any structures, construction, discharges, deposits or other activities described in this application. Note that the signature in Item 14 certifies that application has been made to or that permits are not required from the following agencies. If permits are not required, place N/A in the space for Type Approval.

<u>Agency</u>	<u>Type Approval</u>	<u>Application Date</u>	<u>Approval Date</u>
Dept. of Environmental Quality			
Dept. of Marine Resources			
Army Corps of Engineers			
City/County _____			
Other _____			

14. Certification and signatures

Application is hereby made for authorization to conduct the activities described herein. I agree to provide any additional information/data that may be necessary to provide reasonable assurance or evidence to show that the proposed project will comply with the applicable state water quality standards or other environmental protection standards both during construction and after the project is completed. I also agree to provide entry to the project site for inspectors from the environmental protection agencies for the purpose of making preliminary analyses of the site and monitoring permitted works. I certify that I am familiar with and responsible for the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete and accurate. I further certify that I am the owner of the property where the proposed project is located or that I have a legal interest in the property and that I have full legal authority to seek this permit.

U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willingly falsifies, conceals, or covers up by any trick, scheme or device a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Mississippi Coastal Program (Coastal area only)

I certify that the proposed project for which authorization is sought complies with the approved Mississippi Coastal Program and will be conducted in a manner consistent with the program.

Kelspin Holdings II, LLC

By: 

Signature of Applicant or Agent
Its! Manager

12/02/24

Date



**Attachment “C” to Joint Application and Notification
Draft Environmental Assessment**

**Pier and Floating Docks located at
705 & 701 Bienville Blvd, Ocean Springs, MS**

**Jackson County, Mississippi
December 2, 2024**

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1.0 Introduction

Kelspin Holdings II, LLC is seeking letter of permission for after the fact approval of existing structures, which exceed the approval granted by prior permit. The letter of permission is sought related to certain pier improvements which were installed at 705 & 701 Bienville Blvd, Ocean Springs, MS to allow for improved water access and parking for the businesses located on the subject sites. The improvements, as built, are reflected on the map attached hereto as Exhibit "A".

The owner is filing a Joint Application and Notification to U.S. Army Corps of Engineers, Mississippi Department of Marine Resources and the Mississippi Department of Environmental Quality/Office of Pollution Control, and this EA has been prepared to meet the requirement of attachment "C" to the Joint Application.

2.0 Purpose and Need for the Project

The purpose and need for the project is to allow for additional water access and parking for the businesses located at the subject property, which include Bacchus on the Bayou, Eat Drink Love, and 701 Craft. The vehicle parking for Eat Drink Love and 701 Craft is limited. Eat Drink Love and 701 Craft are not operated by the same restaurant proprietor as Bacchus on the Bayou, and therefore, do not legally share parking. Additionally, as the parcels are separate legal parcels, the same do not have shared legal access. For all of these restaurants, having access and parking by water is important to their success. The businesses are dependent upon boat traffic and the revenue derived therefrom.

2.1 Project Background

705 Bienville is the former home of McElroys Ocean Springs. Based on satellite imagery, it appears that McElroys installed the original wood piling pier structures on or before January 2004. 701 was not formerly used as a bar/restaurant and therefore, didn't require water access for the prior businesses' success. The current owner purchased the properties and hired a contractor to develop the same into the current restaurant/bar uses from May 2021-2023. The contractor handled permitting and installation of the existing piers and floating docks.

3.0 Alternatives

This chapter discusses the alternatives considered, including no action and the proposed action. The options discussed herein are not comprehensive, nor are they mutually exclusive. They are simply discussed as options which were considered regarding the project and the subject property. The options were evaluated based on their effectiveness in meeting the project objectives and needs, as well as their impact on the environment and cost. The owner has proposed the existing use as the best available option.

3.1 No Action Alternative

The no action alternative for this project is complicated. The subject property currently contains the improvements which are requested to be approved. Generally, no action would refer to no action taking place. If no action takes place on the instant project, the project would remain in its existing condition. If the letter of permission for after the fact approval is not granted, the piers will have to be removed, which will at a minimum, in the short term, disturb the environment. Additionally, the removal of the piers and the failure to develop water access and parking for the subject businesses will have an impact on the business ability to be successful and will also impact the public's ability to have water access to the restaurants. 705 (Bacchus on the Bayou) would return to the McElroys pre-January 2004 pier configuration, which is not floating and is very high and unsafe for the public to have to climb up to from a boat. 701 (Eat Drink Love and 701 Craft) would have zero water access and parking if no action is taken to provide access to these businesses.

3.2 Proposed Action

The proposed action for this project would be to allow the existing improvements to remain in their as built condition. An as built map is attached hereto as Exhibit "A". No new improvements are being requested as a part of this application. The improvements are approximately 506' 10" of floating piers running generally east and west, and 78' 4" of wood piers running generally north and south. These improvements are in addition to the piers which were installed on or before January 2004 that are approximately 60' east and west and 65' north and south. Approximately 409' of the floating docks are 4' 10" in width, and the remaining floating docks (approximately 97') are 6' 5" in width. The wooden north and south portion of the pier located at 701 Bienville is 6' in width for 65' in length and is 4' 8" in width for 13' of length.

The size of the piers is reasonable based on the shape and water frontage of the parcels at issue. The property owner owns 705 & 701 Bienville Blvd, Ocean Springs, MS. These are separate parcels and contain different businesses. The piers are not physically connected. Each of the restaurants/bars requires its own access and parking. The configuration of the piers was selected to parallel the property line of the owner. This is the least impactful option for water access for people who use the bayou for other purposes. The piers are situated far enough away from the aquatic grass to minimize shading, and far enough away from the center of the bayou so as to avoid restricting access for the other residents of the bayou.

The floating docks were selected for several reasons. First, the floating docks serve to meet the parking and access need in the most safe and effective manner. The tide range in Old Fort Bayou can be significant at times. It is not uncommon for the tide to range over 3 feet per day. Floating docks allow people to tie up their vessels and disembark the vessels closer to water level. This is much safer than having to climb up multiple feet to a pier that is not floating. Additionally, floating docks are less impactful than

traditional pier materials for the environment. Additionally, they act as a buffer for the marsh system and organisms which lie inside the floating docks and serve to protect them. The floating docks create an estuary and help to buffer the aquatic vegetation and marine organisms from the wake and pollution of boats in the bayou.

3.3 Other Action Alternatives

The pier structures could be manipulated to allow for different sizes or configurations. Also, a pier could have been installed at 705 or 701 Bienville Blvd, Ocean Springs, MS, instead of both locations. This would have decreased overall impacts but would not have met the need for access to the three businesses, as they are not all owned and operated by the same principals. The businesses needed separate access, as they do not all mutually share legal access and parking.

3.4 Alternatives Considered and Dismissed

The piers which run east and west are floating docks. Alternatively, these piers could have been constructed with wood or concrete pilings with wood planks. Wood or concrete pilings with wood planks would have a more negative impact on the environment. Additionally, in the alternative, a solid type structure could have been installed, which would have involved building a bulkhead with pilings and wood and backfilling dirt to raise the grade. For this to effectively provide access, dredging would have had to occur.

The owner elected to install floating docks as they provide the least impactful option for meeting the access and parking needs. Additionally, the floating docks can be detached and moved in the event the same is required. They are less permanent in nature than wood and concrete pier construction.

All alternatives and other action alternatives were found to be inferior to the proposed action and did not meet the purpose and need of the overall project and its objectives.

4.0 Affected Environment and Potential Impacts

The project site is located in Ocean Springs, Mississippi and borders a bayou commonly referred to as Old Fort Bayou. The mean tidal range for this area is 1.5 feet with a diurnal range of 1.73 feet. The tidal range for December 2, 2024, is 2.4 feet.

4.1 Physical Resources

4.1.1 Geology, Soils, and Seismicity

The proposed project should have a negligible impact on geology, soils, and seismicity, as the proposed project consists predominantly of floating piers, which should have little to no effect to the sea bottom. Alternative means of construction, including bulkheads and wood pilings,

would have a more negative impact. No long term impacts are anticipated, with the exception of negligible impacts caused by connecting the floating docks to the bottom.

4.1.2 Air Quality

The air quality in the project area is generally good, with no sources of air pollution in the immediate area. There exists some noise pollution, as the subject property borders US Highway 90. The proposed project should have a negligible impact on air quality, including noise pollution.

4.1.3 Climate Change

The climate of Ocean Springs, Mississippi is typical of Coastal Mississippi. The climate of the subject property is warm and humid. Warm southerly winds from the Gulf of Mexico prevail throughout most of the year, with occasional cool, dry winter fronts dominated by northerly high-pressure systems. The 2014 USACE Climate and Resiliency Policy Statement states the “USACE shall continue to consider potential climate change impacts when undertaking long-term planning, setting priorities, and making decisions affecting its resources, programs, policies, and operations.” The most relevant climate change impact for the project could be a rise in sea levels, which should be mitigated by the floating docks. While climate change could impact the project, the project should have a negligible impact on climate change.

4.2 Water Resources

4.2.1 Water Quality

The proposed project should have negligible impacts on water quality. In evaluating alternatives, the use of floating docks should be superior to traditional wood pilings, as the wood used in traditional marine construction could potentially result in harmful chemicals entering the water.

4.2.2 Wetlands

The proposed project is constructed near saltwater marsh and aquatic vegetation. The piers were placed far enough away from the vegetation to minimize impacts from shading. Also, the marsh and aquatic grasses have backfilled since the installation of the piers, which is further evidence that the piers have not had a negative impact on the same. One could hypothesize that the protection provided by the floating docks has benefited the surrounding aquatic grasses, based on their expansion since installation. Aside from installation of pilings, the project did not involve disturbing wetlands or manipulating the ground or water bottom, as the piers are mostly floating in nature.

4.2.3 Floodplains

The proposed project is located off old fort bayou. No impacts to the flood plain are anticipated. The docks and piers do not require elevation to the BFE.

4.3 Coastal Resources

A site visit to the project reveals that any negative environmental impacts of the subject project are offset by the positive environmental impacts. The aquatic vegetation and wildlife are buffered by the floating docks from waves and pollution of watercraft in the bayou. The floating dock collects trash which is then picked up by employees of the restaurant operators.

4.4 Biological Resources

4.4.1 Threatened and Endangered Species and Critical Habitat

The following species exist or are believed to exist in Jackson County, Mississippi.

Jackson County

Category	Species	Scientific Name	Status	Optimal Survey Window
Amphibians	Dusky Gopher Frog	<i>Rana sevosa</i>	E/CH	Dec 1 – Mar 31
Birds	Eastern Black Rail	<i>Laterallus jamaicensis jamaicensis</i>		PT
Mississippi Sandhill Crane		<i>Grus canadensis pulla</i>	E/CH	Year round
Piping Plover		<i>Charadrius melodus</i>	T/CH	Aug 15 – Mar 31
Red Knot		<i>Calidris canutus rufa</i>	T	Aug 15 – Mar 31
Red-cockaded Woodpecker		<i>Picoides borealis</i>	E/PT	Apr 1 – Jun 3
Wood Stork		<i>Mycteria americana</i>	T	May 1 – Oct 31
Crayfishes			None	
Fishes	Gulf Sturgeon	<i>Acipenser oxyrinchus desotoi</i>	T/CH	Mar 1 – Oct 15
Pearl Darter		<i>Percina aurora</i>	T/PCH	Year round
Insects			None	

Mammals	West Indian Manatee	<i>Trichechus manatus</i>	E	Apr 15 – Dec 31
Mussels			None	
Plants	Louisiana Quillwort	<i>Isoetes louisianensis</i>	E	Nov 1 – May 31; Sufficient rainfall
Reptiles	Alabama Red-bellied Turtle	<i>Pseudemys alabamensis</i>	E	May 15 – Aug 15
Black Pinesnake	<i>Pituophis melanoleucus lodingi</i>	T		Mar 15 – Sep 30
Gopher Tortoise	<i>Gopherus polyphemus</i>	T		Mar 15 – Sep 30
Green Sea Turtle	<i>Chelonia mydas</i>		T	
Hawksbill Sea Turtle	<i>Eretmochelys imbricata</i>		E	
Kemp's Ridley Sea Turtle	<i>Lepidochelys kempii</i>		E	
Leatherback Sea Turtle	<i>Dermochelys coriacea</i>		E	
Loggerhead Sea Turtle	<i>Caretta caretta</i>	T/CH		April 15 – Sep 15
Yellow-blotched Map Turtle	<i>Graptemys flavimaculata</i>	T		May 15 – Aug 15
Alligator Snapping Turtle	<i>Macrochelys temminckii</i>	PT		Apr 15 – Sep 30

The proposed project should have negligible impacts on threatened species. The pier is installed an appropriate distance to marine grasses to minimize impacts from shading. As with all pier construction, some shading will occur, which could result in the decrease of phytoplankton reproduction.

4.4.2 Wildlife and Fish

While walking down the piers and/or throwing a net, you can observe *Mugil cephalus*, *Fundulus grandis*, *Penaeus aztecus*, *Penaeus setiferus*, *Callinectes sapidus*, *uca rapax*, *Micropogonias undulatus*, *Lagodon rhomboides*, *Cynoscion nebulosus*, *Sciaenops ocellatus*, and a plethora of other marine species. The floating docks create a safe harbor for juvenile baitfish and finfish, as well as other aquatic plants and animals. Additionally, bird life does not seem to be affected by the project. On a site visit, one can observe hundreds of *Ardea alba* roosting on the east edge of the subject property.

4.5 Cultural Resources

4.5.1 Historic Properties

The proposed project is not known to be located at a historic property. There are no historical markers located at or near the subject property. The Mississippi Department of Archives and History has an interactive map of more than 1000 historical sites in Mississippi, and none are located at or near the subject property. The piers in question are located over water, and therefore shouldn't impact historic property, if any. There are no anticipated impacts on archaeological or above-ground historic properties.

4.5.2 American Indian Cultural/Religious Site

The proposed project is not known to be located at an American Indian Cultural/Religious Sites. The actual property in which the piers are installed is located over water with a significant mud bottom, and therefore, shouldn't impact any American Indian Cultural/Religious Sites.

4.6 Socioeconomic Resources

At the time of the 2020 census, the population of Jackson County, Mississippi was 143,252. The population of Ocean Springs, Mississippi was 18,429 people, with a median household income of \$72,500.00, and an employment rate of 58.5%. The median age of residents of Ocean Springs, Mississippi is 41.5. The purpose of this project is to meet the properties' needs for water access and additional parking, and to meet the public need to have more dining options that the public can access by water. As the businesses are currently accessed from Bienville off of US Highway 90, only a negligible increase in traffic is expected. No impacts on public health are expected. As previously discussed, the floating piers do provide a safer alternative for unloading as opposed to climbing to the pre-existing non-floating improvements. No impacts on hazardous materials or waste are anticipated. The proposed project helps to supplement the success of the businesses located at the subject properties, which in turn, adds new jobs. This is also an attractive waterfront feature for the City of Ocean Springs. No disproportionately high or adverse effect on minority or low-income populations is anticipated. Under a no action alternative, the City of Ocean Springs would lose a water access restaurant feature.

5.0 Cumulative Impacts

According to § 1508.7 Cumulative impacts represent the “impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time”. (40 CFR 1508.7)

Ocean Springs, Mississippi, along with similar coastal communities from coastal panhandle of Florida to Texas, undergo reconstruction and development of waterfront improvements following storm events. In coastal Mississippi, pier construction and reconstruction are happening almost constantly. While there are no notable commercial projects directly in the vicinity of the subject property at the current time, a ride down Old Fort Bayou reveals several pier construction projects.

While the instant project could have short term impacts related to construction and installation, the long-term cumulative impacts are expected to be positive, especially from a socioeconomic perspective.

6.0 Agency Coordination, Public Involvement and Permits

The public should be notified of the draft EA through public notice as required. A public comment period will take place. No public funding is expected to be used related to the piers at issue. The application is being filed as joint application for letter of approval for after the fact permission with the Mississippi Department of Marine Resources and the US Army Corp of Engineers. Both of these agencies were consulted related to the joint application. Representatives of the Mississippi Department of Marine Resources and the US Army Corp of Engineers met with a representative for the property owner on site. The piers were partly permitted as Certification Number 2022-000149.

7.0 Conclusion

No significant negative impacts are expected related to floodplains, public health and safety, geology, Soils, and Seismicity, groundwater, and hazardous materials. During initial instillation, short term impacts are or were expected related to soil, surface water, wetlands, transportation, air quality, noise, and biological resources. These impacts are considered minor in nature and should not cause any significant cumulative impacts to the area. The project is expected to have a positive socioeconomic impact for the community.

References

https://www.fws.gov/sites/default/files/documents/MS%20TES%20Consultation%20Information_final_15June2022.pdf

https://data.census.gov/profile/Jackson_County,_Mississippi?g=050XX00US28059

https://data.census.gov/profile/Ocean_Springs_city,_Mississippi?g=160XX00US2853520

<https://tidesandcurrents.noaa.gov/stationhome.html?id=8743281>

[file:///C:/Users/Reception/Downloads/noaa_1737_DS1%20\(1\).pdf](file:///C:/Users/Reception/Downloads/noaa_1737_DS1%20(1).pdf)

8.0 List of Preparers

Schwartz, Orgler, Jordan & Williams, PLLC

2137 E Pass Rd, Ste B

Gulfport, MS 39507

228-388-7441

9.0 Appendices (as appropriate, e.g. site maps and photographs, copies of consultation letters)